

EXHIBIT C

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

ePLUS, INC.,
Plaintiff,
v.
LAWSON SOFTWARE, INC.,
Defendant.

: Civil Action
: No. 3:09CV620
: March 26, 2010

COMPLETE TRANSCRIPT OF **CONFERENCE CALL**
BEFORE THE HONORABLE ROBERT E. PAYNE
UNITED STATES DISTRICT JUDGE

APPEARANCES: (All via telephone)

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DIANE J. DAFFRON, RPR
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UNITED STATES DISTRICT COURT

1 If you look at the permutations alone, Your
2 Honor, we're talking literally tens of thousands of
3 different permutations where I'm supposed to figure
4 out what they mean by a so-called system, what they
5 are specifically referencing it to. Are they
6 intending on bringing third party witnesses to enhance
7 and embellish on what the system is? I've been asking
8 that for months because I want to depose any third
9 parties, but they have never told me.

10 When they lump something together and say
11 then it renders it invalid under 102/103, and then
12 have a laundry list of about nine separate references,
13 what am I to infer from that?

14 THE COURT: What you're supposed to do is
15 object that they haven't complied with the Court order
16 and tell them that they haven't. And then if they
17 don't comply, bring it to the Court for decision on
18 that front instead of arguing about it.

19 Look, you, Mr. McDonald, have gone hog wild
20 and crazy with these references, and they are
21 inadequate. They just are. I've never seen any prior
22 art references, alleged invalidity references, as
23 crazy as this.

24 You're just going to have to pick --

25 MR. McDONALD: Well, Your Honor --

1 THE COURT: Wait a minute, Mr. McDonald. You
2 told me you were going to have seven or eight, and I
3 want you to do them like I said; claim-by-claim,
4 element-by-element. What is it that in the prior art
5 invalidates it? And then you take the page of the
6 prior art, and not only do you write it out, you
7 highlight it, and you hand it to them.

8 They don't have to answer anything until you
9 start doing it right and until you cut down your
10 references and make them specific. It's not
11 sufficient to tell somebody some saber system or some
12 whatever it is. I know that you said that you all
13 gave them the page number, but that's not enough.
14 That doesn't do what I asked you to do. You-all have
15 complicated the case unnecessarily.

16 MR. McDONALD: Beyond the page number, I put
17 the tabs in, Your Honor, which is more specific than
18 page number. We have column and line references
19 specifically to the tab.

20 THE COURT: But you didn't do it on a
21 claim-by-claim, element-by-element basis.

22 MR. McDONALD: That's Exhibit A, Your Honor,
23 to what we provided to you. It's a copy of our
24 invalidity contentions. And that's exactly what we
25 did. We have examples in there. We provided excerpts

1 of the 117 pages of charts where we did go
2 element-by-element, claim-by-claim, and page and
3 column, and line number by line number.

4 Yes, there are some references to saber
5 system. That's true. But what we have asked for in
6 this motion --

7 THE COURT: Well, you're not going to get
8 anything else. Okay? Until you straighten yourself
9 out, you're not getting anything else. That's the end
10 of it. I'm denying your motion because I think
11 you-all have gone off the deep end, and you-all have
12 not gotten this thing organized the way it needs to
13 get organized.

14 You came here and told me you were going to
15 do a very few number of prior art references, and you
16 come up with this general references, and I don't
17 think you've done it right.

18 Now, the next issue.

19 MR. ROBERTSON: This is Scott Robinson. They
20 are insisting that we apply our infringement analysis
21 to a proposed claim construction. And they haven't
22 done that with respect to the invalidity issues. I
23 don't care if they use their claim construction or our
24 claim construction or both, but I think it should be
25 references --

1 Mr. Robertson is asking us to do.

2 THE COURT: When were these interrogatories
3 filed, Mr. Robertson?

4 MR. ROBERTSON: I believe -- I think it
5 was -- I'm not sure, Your Honor. I think it was
6 October of 2009. It's been several months.

7 THE COURT: Well, it's too late to be asking
8 that. If you didn't understand that word, you should
9 have asked about that back a long time ago. Answer
10 the interrogatory.

11 I, frankly, don't understand how it is a
12 defense to infringement to say you sold Payne
13 something, but Payne didn't use all of it. If you
14 sold it to me, that's an infringement, it seems to me.
15 So I don't really understand the issue, but you-all
16 know enough and you can use the dictionaries to get
17 your definitions. Answer it.

18 All right. That takes care of everything
19 that you all have got pending right now, doesn't it?

20 MR. ROBERTSON: Well, Your Honor, we had one
21 issue with respect to non-infringement contentions,
22 but I think we can work that out with Lawson.

23 THE COURT: Good. That will be good.

24 All right. Now, I don't know if there's
25 enough time in my lifetime and yours to try a case

1 with 28 prior art references that are described as
2 generally as these are and with 30-something different
3 combinations that are as vague as these are.

4 So you-all are going to have to get yourself
5 straight there or you're going to end up with no prior
6 art defense. That's what's going to happen to you.

7 So I suggest you work out a way to get that
8 sorted out and focus on what's really at issue, get it
9 on the table, and get it straightened out. And I
10 would suggest that, if I were you, I'd do that
11 immediately because you've got expert reports coming
12 up, and your time is running on you-all.

13 Mr. Robertson, have you given any more
14 thought to narrowing your claims further now that
15 discovery has been underway?

16 MR. ROBERTSON: I'll certainly give it some
17 thought, Your Honor. I think many of the elements are
18 similar in the different claims. So I've never had a
19 problem putting on an infringement case before in less
20 than two and a half days.

21 Quite frankly, Judge, with the Markman ruling
22 still out there, it's hard for me to make an informed
23 decision. I'm not faulting the Court. Obviously, the
24 parties are working diligently to try to get you the
25 information we need, but that's where I find myself,